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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St SW
Washington, DC 20554

October 6th, 2017

Notice of Ex Parte

In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79; Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 17-199

Dear Ms. Dortch,

On Wednesday, October 4th, 2017, Tom Struble and Joe Kane of the R Street Institute (“R Street”) met with Jay Schwarz, Wireline Advisor for Chairman Pai, and Nathan Leamer, Policy Advisor for Chairman Pai. During this meeting, R Street discussed the above-captioned proceedings, regarding two rulemakings and one notice of inquiry the Commission currently has open on various issues relating to broadband deployment.¹

R Street was actively involved during the comment period of the two rulemakings, and offered several suggestions for how the Commission can use its authority to accelerate the

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No. 17-84 (Apr. 20, 2017), available at <https://goo.gl/XAwo65>; *Accelerating Wireless Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 17-79 (Apr. 21, 2017), available at <https://goo.gl/X7eQdR>; *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Thirteenth Section 706 Report Notice of Inquiry, GN Docket No. 17-199 (Aug. 8, 2017), available at <https://goo.gl/2pTgVU>.

deployment of wireline and wireless broadband infrastructure.² R Street has also detailed these suggestions in writings elsewhere.³

During the meeting, R Street reiterated its suggestions for how the Commission can accelerate broadband deployment, including the proposal to require fees for accessing public rights of way — including utility poles and conduit — to be based on the costs incurred in managing the rights of way and facilitating access thereto, rather than based on a mistaken conception of “market price.”⁴ As R Street has explained, access to public rights of way is a necessary input for broadband deployment, and state and local governments have monopoly control over those rights of way. With no alternatives, state and local governments are able to charge higher and higher fees from broadband providers, and also extract in-kind payments, revenue-sharing agreements, and other “voluntary” concessions. Such extortionate fees and requirements may be a convenient way to raise public funds, but they are a scourge to broadband deployment. These high fees and burdensome concessions hamper competition and are inevitably passed on to consumers in the form of higher prices and slower speeds. The Commission should exercise its authority to declare that such “market-rate fees” constitute unreasonable barriers to deployment and are unlawful.

R Street also discussed the Commission’s Section 706(b) notice of inquiry regarding the current state of broadband deployment.⁵ For too long, the FCC has used broadband progress reports as a political football, manipulating the benchmarks and metrics in order to manufacture a predetermined outcome, and then using that finding to justify further

² See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Comments of R Street Institute, WC Docket No. 17-84 (June 15, 2017), available at <https://goo.gl/EHgQvd>; *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Comments of R Street Institute, WT Docket No. 17-79 (June 15, 2017), available at <https://goo.gl/Vo5tVm>.

³ See, e.g., Tom Struble & Joe Kane, *Want to Deploy More Broadband? Gets the Feds Out of the Way*, THE HILL (June 24, 2017), available at <https://goo.gl/jjZPyK> (arguing, contrary to what the publication-chosen title suggests, that the FCC should use its authority to clear barriers to deployment at the state and local level).

⁴ See, e.g., Sam Liccardo, *Why Does Verizon Care About Telephone Poles?*, N.Y. TIMES (Oct. 3, 2017), available at <https://goo.gl/SW9o4L> (attempting to justify the practice of charging “market-rate fees” for accessing public rights of way).

⁵ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Thirteenth Section 706 Report Notice of Inquiry, GN Docket No. 17-199 (Aug. 8, 2017), available at <https://goo.gl/2pTgVU>.

regulatory actions.⁶ Such political prestidigitation is unseemly, and it obscures the true progress of broadband deployment. R Street encouraged the Commission to avoid politicizing the Section 706(b) inquiry, as it has done in the past, and merely report the deployment data in an objective fashion, perhaps using multiple benchmarks or metrics,⁷ without contriving a binary finding either way regarding the progress of broadband deployment.

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In accordance with Section 1.1206(b) of the Commission's rules,⁸ this letter is being filed with your office. If you have any questions, please contact the undersigned.

Respectfully submitted,

_____/s/
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⁶ See, e.g., Tom Struble, *Take the Politics Out of Broadband Progress Reports*, MORNING CONSULT (Sept. 21, 2017), available at <https://goo.gl/HnhG3T> (decrying the politicization of broadband progress reports and offering suggestions for how to improve them).

⁷ See, e.g., *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Comments of NCTA — The Internet & Television Association, GN Docket No. 17-199, at 5–7 (Sept. 21, 2017), available at <https://goo.gl/Zn2Kjm> (arguing that the Commission should report on deployment progress at multiple speed thresholds).

⁸ 47 C.F.R. § 1.1206(b).